

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KATHRYN WILSON)	
Claimant)	
VS.)	
)	Docket No. 237,181
MERCY HEALTH CENTER)	
Respondent)	
AND)	
)	
KANSAS HOSPITAL ASSOCIATION)	
Insurance Fund)	

ORDER

Claimant appealed the January 31, 2000 Award entered by Administrative Law Judge Bryce D. Benedict.

APPEARANCES

Seth G. Valerius of Topeka, Kansas, appeared for claimant. John A. Bausch of Topeka, Kansas, appeared for respondent and its insurance fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a March 13, 1998 accident and resulting right ear injury. On that date, claimant's right eardrum was punctured while she was being fitted for a hearing aid. After considering the evidence, the Judge found that the accident did not arise out of and in the course of claimant's employment with respondent. Therefore, the Judge denied the request for benefits.

Claimant contends Judge Benedict erred. Claimant argues that she had no intention of obtaining hearing aids until respondent gave her a memo stating that her suspected hearing loss threatened the safety of patients and coworkers. Claimant argues that her job was at risk if she did not address the suspected hearing loss. Therefore, claimant argues the injury to the right ear arose out of and in the course of employment.

Conversely, respondent and its insurance fund contend the Judge's findings and conclusions are well supported by the evidence and the Award should be affirmed.

The issues before the Board on this appeal are:

1. Did the right ear injury arise out of and in the course of claimant's employment with the respondent?
2. Did claimant provide respondent with timely notice of the accident or injury?
3. How many weeks of temporary total disability benefits are due?
4. What is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. Claimant worked in respondent's obstetrics unit as a registered nurse.
2. In February 1998, claimant's supervisor spoke with claimant about a suspected hearing loss and presented claimant with a memorandum that read as follows:

During the past several months, I have noticed that you may be experiencing some hearing loss. I have received reports from other nurses who have noticed this also.

On Tuesday, February 17, 1998, while completing your orientation for cesarean section circulating, your hearing was noted to be a problem. Angie Elliott observed that it was difficult for you to hear requests that were made by the scrub technician. Angie was standing next to you and had no trouble hearing the technician's requests. After the technician made the requests louder a second time, you did respond. Repeat requests had to be made for three items—suture, gloves and warm normal saline.

We need to review your responsibilities and the potential impact hearing loss may have on caring for patients. I am concerned that hearing loss poses a direct threat to the safety of patients or coworkers.

We need to review this quickly and develop a strategy to deal with it. Let's schedule a time to discuss this matter in the next two to three days.

According to claimant's uncontroverted testimony, the supervisor asked if claimant could wear hearing aids to enhance her hearing.

3. Fearing her job was at risk, claimant scheduled an appointment with an audiologist who found that claimant had mild to moderate hearing loss in the left ear and mild loss in the right ear. The audiologist advised claimant she needed a hearing aid for the left ear. Although the right ear was only borderline, the audiologist also recommended a hearing aid for the right ear because of the stereo effect.

4. On March 13, 1998, claimant returned to the audiologist to be fitted for left and right hearing aids. During that procedure, the molding material perforated claimant's right eardrum and entered the middle ear.

5. Claimant came under the treatment of Dr. Gregory Ator, a board-certified otolaryngologist. Despite two procedures, the doctor was unable to remove all of the molding material. Because of the puncture and the molding material that remains in the middle ear space, claimant has sustained an 18 percent functional impairment to the right ear. That 18 percent impairment was in addition to six percent, which preexisted.

6. Before the March 1998 incident, claimant had a history of having some hearing problems with the left ear. In 1990, claimant had left ear surgery. While being treated on that occasion, claimant told the surgeon that she had chronic ear disease and had experienced progressive hearing loss in the left ear that was especially noticeable over the previous ten years.

CONCLUSIONS OF LAW

1. The Award should be affirmed.

2. Only those accidents that arise out of and in the course of employment are compensable under the Workers Compensation Act.¹

3. The phrase "out of" employment points to the cause or origin of the worker's accident and requires some causal connection between the accidental injury and the employment. An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.²

¹ See K.S.A. 44-501.

² *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058, syl. 4 (1995).

4. The phrase “in the course of” employment relates to the time, place, and circumstances under which the worker’s accident occurred and means the injury happened while the worker was at work in the employer’s service.³

5. Under these facts, the Appeals Board is unable to find a causal connection between claimant’s work for respondent and the perforated eardrum. Although it is clear from the memorandum from claimant’s supervisor that good hearing was required for claimant to safely perform her job, the trip to the audiologist was an activity personal to claimant and did not further respondent’s business or charitable interests.

6. This case should be distinguished from those cases in which a worker is injured while seeking medical treatment for a work-related injury and, therefore, entitled to receive workers compensation benefits. The rationale used by the Courts in those cases is that securing medical treatment is incidental to the employment and, therefore, an injury sustained while seeking treatment arises out of and in the course of employment.⁴ The Courts have also found that injuries caused by medical treatment are compensable under the Workers Compensation Act as a direct consequence of the primary compensable injury.⁵

7. Because this claim should be denied on the basis that the accidental injury did not arise out of or in the course of employment, the remaining issues are moot.

AWARD

WHEREFORE, the Appeals Board affirms the January 31, 2000 Award entered by Judge Benedict.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

³ *Kindel*, syl. 5.

⁴ See *Taylor v. Centex Construction Co.*, 191 Kan. 130, 379 P.2d 217 (1963).

⁵ See *Roberts v. Krupka*, 246 Kan. 433, 790 P.2d 422 (1990).

c: Seth G. Valerius, Topeka, KS
John A. Bausch, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director